

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35036

SUFFOLK & SOUTHERN RAIL ROAD LLC—LEASE AND OPERATION EXEMPTION—
SILLS ROAD REALTY, LLC

Decided: October 12, 2007

On May 18, 2007, Suffolk & Southern Rail Road LLC (Suffolk), a noncarrier, filed a verified notice of exemption under 49 CFR 1150.31 to lease from Sills Road Realty, LLC (Sills), a noncarrier, approximately 11,000 feet of track that Suffolk stated was currently being constructed by Sills on a 28-acre parcel of land in Yaphank, Suffolk County, NY, and to operate over it. In a decision served on June 1, 2007, Suffolk's notice of exemption was found incomplete, and Suffolk was directed to file supplemental information describing the construction of the trackage that appeared to be a line of railroad subject to the Board's jurisdiction based on Suffolk's stated intention to provide for-hire service over it. On June 15, 2007, Suffolk sought to withdraw its notice of exemption without providing the information required by the June 1 decision or a substantive reason for its attempted withdrawal.

In a decision served on August 13, 2007, the Board found that, in failing to explain the situation, Suffolk had left unrefuted its verified statement that for-hire service was intended for the trackage underlying Suffolk's notice of exemption, in which case Board authorization of the construction of the trackage, and an environmental review under the National Environmental Policy Act, would be required. Under these circumstances, the Board directed Suffolk to file: (1) the information required by the June 1 decision; (2) a substantive reason for its attempted withdrawal; and (3) a detailed explanation of whether it or Sills anticipated that for-hire service would have been provided over the trackage that was to be constructed.

On August 23, 2007, Suffolk filed a response to the August 13 decision, stating that Sills never undertook any construction of rail facilities at the Sills Road location at issue here. Further, Suffolk stated that that it never concluded any agreement or other relationship with Sills with respect to the lease, construction, or operation of the trackage, and, for this reason, had attempted to terminate the proceeding.

In a decision served on September 25, 2007, the Board found that, because Suffolk had stated that neither it nor Sills had undertaken any construction of rail facilities at the Sills Road location or consummated any agreement with Sills to lease or operate over the proposed trackage, Suffolk had provided enough information to support its attempted withdrawal of its notice of exemption. At the same time, however, the Board stated that it would view with

disfavor any future request for authority to commence rail operations over trackage at this location unless the construction of that trackage had first been authorized by the Board.

On October 2, 2007, the Board received a letter from the Town of Brookhaven, NY (Brookhaven), concerning a proposed rail facility being constructed by U S Rail Corporation (U S Rail) on property it has leased in Yaphank. Upon further investigation, it appears that this is the same property and proposed rail facility at issue in this proceeding. An article appearing in Newsday on October 1, 2007, also describes the property of concern to Brookhaven as having the same owner, Sills, and involving the same “28-acre site” in Yaphank, as in this proceeding. Attached to the Brookhaven letter were two letters, dated July 12 and July 25, 2007, from counsel for U S Rail (who also is counsel for Suffolk). Those letters stated that U S Rail has leased the property at this location and “intends to construct and operate as an ‘exempt spur’ within the meaning of 49 U.S.C. 10906, a line of rail and related side tracks, yard tracks, turn outs, switches and connecting track . . . thereon for the purpose of operating a common carrier railroad and transloading facility at that location.”

Based on the new evidence that rail construction may be occurring or contemplated on this property, and because no party has sought authority from the Board to construct any rail facilities at this site, this proceeding will be reopened on the agency’s own motion and U S Rail will be made a party to this proceeding. If U S Rail, Suffolk, Sills, or any other related entity is undertaking construction of any rail facilities in Yaphank, Brookhaven, or anywhere in that vicinity, it is directed to immediately cease that activity and to either obtain Board authorization pursuant to 49 U.S.C. 10901(a) or a Board decision (through a declaratory order proceeding or other appropriate formal means) finding that such activity does not require Board approval.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened and U S Rail Corporation is made a party to this proceeding.
2. U S Rail, Suffolk, Sills, or any other related entity conducting rail construction in Yaphank, Brookhaven, or in the vicinity, is directed to immediately cease that activity and either obtain authorization from the Board pursuant to 49 U.S.C. 10901(a) or a Board decision finding that such activity does not require Board approval.
3. This decision is effective on its service date.

4. A copy of this decision is being served on John D. Heffner, as counsel for both Suffolk and U S Rail.

By the Board, Chairman Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams
Secretary